

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 006

June 27, 1958

FRAUD PENALTY

Syllabus:

Failure to file returns due to fraud with intent to evade tax is grounds for imposing the fraud penalty.

Advice is requested as to the propriety of assessing a fraud penalty against one who has not filed a return for specified years.

Section 18685 of the Revenue and Taxation Code, states that "if any part of a deficiency is due to fraud with intent to evade tax," the penalty shall be assessed.

The fraud penalty is imposed in a variety of circumstances one of which is in cases where there is a failure to file a return, etc., (Ollie V Kessler v Comm., 39 BTA 646).

The penalty attaches to the entire deficiency even if only part is due to fraud. (Duffin v Lucas, 55 F2d 786, cert. den., 287 US 611; Mauch v. Comm., 113 F2d 555; Maitland A. Wilson, 7 TC 395; Aaron Hirschman, 12 TC 1223, app. dism'd. (CA 2).

The penalty when imposed is computed on the total correct tax due. (American Milk Products Corp. v. U.S., 41 F2d 966).

Proof of fraud and the imposition of the fraud penalty do not preclude the imposition of the penalty for failure to file a return. (Pincus Brecher, 27 BTA 1108; Ollie V. Kessler, 39 BTA 646).